

# Doing Business in the Kyrgyz Republic





## Preface

This guide has been prepared by Baker Tilly Bishkek, an independent member of Baker Tilly International. It is designed to provide information on a number of subjects important to those considering investing or doing business in the Kyrgyz Republic.

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Doing Business in the Kyrgyz Republic has been designed for the information of readers. Whilst every effort has been made to ensure accuracy, information contained in this guide may not be comprehensive and recipients should not act upon it without seeking professional advice. Facts and figures as presented are correct at the time of writing.

Up-to-date advice and general assistance on Kyrgyzstan matters can be obtained from Baker Tilly Bishkek; contact details can be found at the end of this guide.

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# 1 Fact Sheet

## Geography

Location	Central Asia
Area	199,951km <sup>2</sup>
Land boundaries	Kazakhstan, Uzbekistan, Tajikistan and China
Coastline	Landlocked
Climate	Subtropical in the southwest (Fergana Valley); temperate in the northern foothill zone; dry continental to polar in the high Tien-Shan Mountains
Terrain	Mountainous
Time zone	GMT +5 (summer) and GMT +6 (winter)

## People

Population	5.5 million
Religion	No official religion, most of the population is Muslim
Language	Kyrgyz – state; Russian – official

## Government

Country name	The Kyrgyz Republic (Kyrgyzstan)
Government type	Parliamentary Republic
Capital	Bishkek
Administrative divisions	Seven provinces
Political situation	Stable unicameral democracy. The elected President of the Republic is the Head of State and the Commander-in-chief of the military. The Prime Minister is the head of government and is chosen from the ruling party or parties

**Economy**

GDP – per capita	US\$2,400 (2012 est)
GDP – real growth rate	1% (2012 est)
Labour force	2.3 million
Unemployment	2.5% (officially registered unemployed people); the actual figure is estimated to be 14.6% (2012)
Currency (code)	Kyrgyz Som (KGS)



## 2 Business Entities and Accounting

### 2.1 Business Entities

The most popular types of business entity in Kyrgyzstan are limited liability companies and joint stock companies. Other types of business entities include full liability companies and state entities.

#### 2.1.1 Joint stock companies (JSC)

A JSC is a legal entity which operates for profit and raises funds through the issuance of shares, the value of which must be expressed in Kyrgyz Som.

A JSC can be created through establishment or by re-organisation of an existing legal entity (via merger, division, separation, or transformation).

Shares issued by a JSC must be registered with the authorised state body regulating the securities market in the manner prescribed by legislation.

Share capital should not be less than KGS100,000.

Shareholders of a JSC may be individuals or legal entities.

Government and local authorities can establish or act as co-founders of a JSC, or acquire shares and be shareholders of a JSC.

A JSC may be liquidated voluntarily in accordance with the Kyrgyz legislation and the charter of the JSC.

An open JSC may conduct a public offering of shares and enjoys free trading of shares in accordance with the requirements of the Law on Joint Stock Companies and other regulations. The charter of an open JSC cannot restrict the free trading of shares.

The number of shareholders of an open JSC is unlimited.

A closed JSC is not entitled to conduct a public offering of shares. Shares may be transferred only among the shareholders of the closed JSC.

The number of shareholders of a closed JSC may not exceed 50. If the number of shareholders does exceed 50, the company must be transformed into an open JSC within one year; otherwise it will be liquidated by the court.

#### 2.1.2 Limited liability companies (LLC)

A LLC offers its participants (founders) the protection of limited liability. A LLC is a separate legal entity and is responsible for its obligations. The participants in a LLC are responsible for the obligations and losses of the LLC up to the amount of their contributions to the authorised capital of the LLC.

The amount of charter capital is determined by the participants in the foundation document.

A LLC may be founded by individuals (residents or non-residents of the Kyrgyz Republic) and/or legal entities (local or foreign).

The foundation document package includes a foundation agreement and charter of LLC. Registration is carried out by the Ministry of Justice (when founders are foreign entities) or by the Ministry of Justice's authorised agency. Mining companies must be registered at the territorial agencies of the Ministry of Justice.

Registration is a relatively straightforward process, generally taking up to three days; it includes registration of the legal entity and notification to the tax authorities, the social fund and registration with statistics agencies.

In order to establish a LLC, the applicant must submit the following documents:

- Application for incorporation
- Letter stating the owners' decision to create a LLC – founding agreement
- Copies of identification documents of the founders and managers.

### 2.1.3 Partnerships

A full partnership is an economic partnership whose members are jointly liable for its obligations with all partnership property belonging to the partners.

Gains and losses of a full partnership are allocated between the partners in proportion to their contributions to charter capital, unless otherwise provided for by the partnership agreement.

A limited partnership is a partnership which includes, along with one or more partners jointly liable for the obligations of partnership (general partners), one or more partners whose liability is limited to the amount of their contributions to charter capital of partnership (limited partners) and who do not participate in the management of the partnership.

The aggregate amount of contributions of limited partners of a limited partnership may not exceed 50% of the total charter capital. The constitutional documents of a limited partnership may provide an obligation for limited partners to pay the contributions of general partners.

Gains and losses of a limited partnership are allocated between all the partners in proportion to their contributions, unless otherwise provided by the partnership agreement.

Partners in full and limited partnerships may be individuals and/or legal entities.

An individual can only be a partner of one full partnership or a general partner in only one limited partnership.

Partnerships must have at least two participants.

Kyrgyz legislation allows for the establishment of a simple partnership without the formation of a legal entity, ie no state registration is required.

A simple partnership is an association of two or more individuals and/or legal entities engaging in joint economic activity based on an agreement between them. Generally, partners make equal contributions to the partnership unless they agree otherwise. Evaluation of contributions made in kind must be agreed between the partners. Partners are jointly responsible for their common liabilities unless they agree otherwise.

#### **2.1.4 Branches**

Branches and representative offices of companies are not separate legal entities. They are endowed with property of the legal entities which created them and operate under provisions approved by these legal entities. Both branches and representative offices may be established by foreign entities – it is common for foreign entities to establish a branch in the Kyrgyz Republic as either a JSC or LLC, in which cases they will be a legal entity in their own right. Kyrgyz legislation provides minor distinctions between branches and representative offices. Representative offices carry out only representation and protection of interests of a legal entity, and perform transactions and other legal actions on behalf of the legal entity. Branches perform all or part of functions of a legal entity, including the function of representation.

Branches and representative offices of companies are permitted to:

- Open bank accounts and manage payments in any currency
- Hire both local staff and foreign personnel and therefore receive a work permit for them
- Participate in any contractual relationships with local and foreign companies and discharge/assume obligations under any agreements relating to payments in local and foreign currency
- Apply to purchase/lease real estate.

The existence of a branch or representative office is limited to the period of existence of the legal entity which created it. There are certain activities for which a branch or representative offices may not obtain a license.

Branches and representative offices located in the territory of the Kyrgyz Republic are subject to mandatory registration with the Ministry of Justice of the Kyrgyz Republic or its authorised agencies. This process generally takes up to three working days.

Registration of a branch or representative office of a foreign bank is subject to permission from the National Bank of the Kyrgyz Republic.

#### **2.1.5 Sole traders**

Citizens of the Kyrgyz Republic, foreign citizens, or stateless persons residing in the territory of the Kyrgyz Republic may carry on in business as individual entrepreneurs (sole traders).

Individuals have the right to conduct business on the basis of a patent (see below) if such activity is included in the list of activities carried out on the basis of patent approved by the Government of the Kyrgyz Republic.

A patent is a document issued by the tax authority certifying payment of appropriate taxes by the individual. The individual engaged in entrepreneurial activities on the basis of a patent need not report to tax authorities, but only buys a patent and maintains its validity.

## 2.2 Audit and Accounting Requirements

All entities operating in the territory of the Kyrgyz Republic, as well as branches and representative offices of foreign entities, must maintain accounting records and prepare financial statements in accordance with legislation.

International Financial Reporting Standards (IFRS) have been adopted in the Kyrgyz Republic and are applied to public interest entities. This applies to all public interest entities regardless of ownership structure but does not include private entrepreneurs and public institutions. All other entities apply International Financial Reporting Standards for Small and Medium Enterprises (IFRS for SME) except for public institutions which are covered by International Financial Reporting Public Sector Accounting Standards.

Legal entities are required to maintain primary documents, accounting records, a chart of accounts, financial statements and other documents on paper and on a computerised accounting system in such form and manner, and within such time limits, as stated by the laws of the State archive, as well as other relevant legislation.

Summary records (registers) are compiled in order to control and sequence the data processing of business transactions on the basis of primary records. Forms of the accounting registers which accumulate information are developed and approved by legal entity. Other forms may be used if recommended by state authority.

Entities, except for budget institutions, must prepare annual financial statements within 60 days after their year-end, unless otherwise provided for by legislation.

Companies which are subject to mandatory annual audit include:

- Banks and financial institutions licensed by the National Bank of the Kyrgyz Republic
- Insurance companies
- Public companies that have implemented a public offering of securities
- Investment funds
- Pension funds.

Other entities may opt to have their financial statements audited.

## 3 Finance and Investment

In general, foreign investors have the same rights and obligations as Kyrgyz Nationals, and are able to access investment incentives on a similar basis. Kyrgyz legislation provides fairly broad rights and guarantees to foreign investors, including the right of repatriation of investments and assets, protection of investments against expropriation and compensation for losses arising from expropriation.

### 3.1 Exchange Control and Other Restrictions

Kyrgyzstan has a liberal exchange system and, in general, there are no restrictions on converting or transferring funds (associated with cross-border transactions) into freely usable currency at the legal, market-clearing rate.

There are no restrictions whereby different types of bank accounts are required for investment or import/export activities. Foreign investors may convert Kyrgyz Soms for repatriation.

The purchase/conversion of local currency may be performed through authorised (licensed) Kyrgyz banks and exchange offices.

Transactions related to the movement of capital are not subject to registration. However, information on loans received by Kyrgyz residents in foreign currency should be reported to the National Bank of the Kyrgyz Republic.

Payments among Kyrgyz residents should be made in domestic currency only.

### 3.2 Sources of Finance

#### 3.2.1 Banking

The National Bank of Kyrgyz Republic (NBKR) is responsible for banking supervision and for regulation of banks and other NBKR-licensed financial institutions.

A number of commercial banks operate in the Kyrgyz Republic including branches of high profile foreign banks.

#### 3.2.2 Stock exchange

The Kyrgyz Stock Exchange cannot be viewed as a common source of high-level finance and very few companies are listed on the Exchange.

### 3.2.3 Other sources of finance

International donors are widely presented in Kyrgyzstan. These include the World Bank Group, European Bank for Reconstruction and Development and the Asian Development Bank.

### 3.2.4 Incentives and restrictions

The Kyrgyz Republic has established free economic zones (FEZs) to encourage the creation of efficient export-oriented manufacturing and the implementation of new types of technologies.

Companies registered in a FEZ are afforded the following benefits:

- Exemption from corporate taxes
- Exemption from export duties in respect of: the export of goods produced in FEZs; the import of goods into FEZs; goods destined for shipment and re-export
- Exemption from quotas and licensing fees for the export of goods produced in FEZs.

The Kyrgyz Republic is compliant with World Trade Organisation Trade Related Investment Measures obligations, and the Kyrgyz Government has reduced the tax burden on the repatriation of profits by foreign investors to conform to the tax rate for domestic investors. There are no specific requirements for foreigners to apply for permission to invest, however, projects are likely to be scrutinised for the impact on employment and tax revenues.

# 4 Employment Regulation and Social Security

## 4.1 Residence and Work Permits

Foreigners and stateless persons have the right to engage in labour or business activities in Kyrgyzstan. The Government determines annual quotas in respect of foreign employees for each region and employers wishing to attract and use foreign labour are required to apply to the Ministry of Youth, Labour and Employment for a work permit. Together with the application, the employer should submit documents, including passport and employment contract, and a reply will be issued within 30 days.

The duration of a work permit will depend on the categorisation of the foreign worker. For example, work permits for foreign skilled workers are issued for no more than two years; and for a foreign individual entrepreneur no more than three years; and for all other citizens for one year. The one year visa may be renewed annually subject to a maximum duration of two to three years.

Work permits may not be transferred between employers. Foreign workers have the right to engage in labour activities in more than one organisation only if permits are obtained for each organisation.

## 4.2 Employment

Employment relations are formalised in the labour agreement between an employer and an employee. An employment agreement must contain certain provisions found in the Kyrgyz Labour Code.

An employment contract must be in written form, two copies produced and signed by both parties. One copy must be provided to the employee, the other is kept by the employer.

Employment agreements may be concluded for either an indefinite or a fixed term. An indefinite term employment agreement is the default option under the Labour Code while a fixed-term agreement may be concluded only if certain legislative requirements are met. Employees have the right to conclude employment agreements with several employers simultaneously.

The annual basic paid leave granted to employees is 28 days.

Specific provisions for the termination of employment are stipulated in the Labour Code. Employees can terminate their employment at any time by giving two weeks' written notice to the employer.

In the event that employment is terminated due to staff redundancy or company liquidation, employees must be notified personally at least one month before the actual termination.

Where an employment is terminated due to the liquidation of a company, staff redundancy, or re-organisation of the company, employees should be paid compensation of not less than two months' average salary.

### 4.3 Social Security

The Labour Code of the Kyrgyz Republic provides the following types of social insurance:

- Pension provision
- Burial allowance
- Temporary disability allowance
- Maternity allowance
- Compensation for the costs of mandatory medical insurance.

Pensions, benefits and compensation for state social insurance are funded from the insurer. The insurer is the Social Fund of the Kyrgyz Republic.

The Social Fund is financed by:

- Compulsory insurance premiums of the policyholders and insured persons
- Voluntary contributions of enterprises, institutions, organisations and individuals
- Appropriations from the state budget
- Income from the investment of pension assets
- Other income.

The contributions payable are based upon gross pay: 17.25% is due from the employer and 10% from the employee.

For employees who are not citizens of the Kyrgyz Republic but are temporarily resident in the Kyrgyz Republic or in another state working for an employer which is registered as a payer of contributions in the Kyrgyz Republic, the contribution rate is 3%, which is paid by the employer.



# 5 Taxation

## 5.1 Corporate Taxes

### 5.1.1 Profit tax

The following are liable to pay profit tax:

- Domestic organisations
- Foreign organisations engaged in activities through a permanent establishment in the Kyrgyz Republic
- Individual entrepreneurs
- Tax agents paying a foreign company income from a source in the Kyrgyz Republic that is not associated with a permanent establishment in the Kyrgyz Republic.

The tax base for profit tax is an accounting profit subject to certain adjustments as specified in the Tax Code.

The tax base for foreign companies receiving income from sources in the Kyrgyz Republic not related to a permanent establishment in the Kyrgyz Republic is gross revenue without any deductions.

Tax losses incurred by a taxpayer can be carried forward for a period of five years. Losses associated with exempt income may not be carried forward.

The Tax Code provides an exhaustive list of income types which are not included in the tax base:

- Property received as a contribution to a company's charter capital
- Dividends received from domestic companies
- Property received as a contribution to a simple partnership
- Property received for trust management
- Share premium arising on the issue of shares
- Interest income from, and capital gains arising on the sale of securities categorised as either an "international listing" or a "blue chip" in the stock exchange listing as of the date of sale.

The profit tax rate is 10%.

The tax base for foreign organisations engaged in economic activity through a permanent establishment in the Kyrgyz Republic is determined on the basis of profit attributed to the permanent establishment.

The tax period for profit tax is the calendar year.

The annual profit tax declaration is due by 1 March of the following year. Any tax obligations due must be paid in full by that date.

The taxpayer is obliged to make quarterly advance payments of profit tax at 10% of accounting profit for the reporting period. The due date for payment is 20 days after the end of the reporting quarter.

Gold mining companies are obliged to pay revenue tax, instead of profit tax, which is applied to the proceeds of the sales of gold. The tax rate is determined by the market price of gold.

#### **5.1.2 Value added tax**

Value added tax (VAT) is an indirect tax applied to all supplies subject to VAT, including taxable imports.

An entity carrying out economic activities must register for VAT if its turnover exceeds the registration limit of KGS 4m during a period of no more than 12 consecutive months. Voluntary registration for VAT is also available.

Entities engaged in the import of taxable goods into the Kyrgyz Republic must also register for VAT.

#### ***Taxable supplies***

Taxable supplies include the following, except for exempt supplies determined by the Tax Code:

- Supply of goods on the territory of the Kyrgyz Republic
- Rendering of works and services in the Kyrgyz Republic
- Import of goods to the Kyrgyz Republic.

#### ***Taxable imports***

Taxable import means import of goods into the custom territory of the Kyrgyz Republic, except for the import of goods exempt from VAT.

0% and 12% VAT rates may be applied to taxable supplies.

Zero rated supplies include:

- Export of goods, except for export of gold alloy and refined gold and silver
- International transportation of passengers, baggage and cargo, except for international railway transportation
- Services of transit flights of aircrafts, as well as services related to international transportation, except for international railway transportation.

The major VAT-exempt supplies include but are not limited to:

- Financial and insurance services and financial leasing
- Supply of land, residential buildings and premises
- Export of works and services
- Roaming and international telecommunication services
- Supply and export of gold alloy and refined gold and silver
- Supply of public utility services, pension procurement
- Local passenger transportation and international railway transportation.

For goods, the place of supply is determined as the place of transfer of goods or initial point of transportation. Services are generally considered provided at the place of the economic activity of the service provider or actual place where services are rendered. However, for certain types of services, such as consulting, legal, advertising etc, the services are considered provided at the place of the buyer.

The value for VAT purposes is the total value of the goods or services including any duties, taxes, and/or other fees, excluding VAT and sales tax. The taxable value of imported goods for VAT purposes is the customs value of those goods including transportation and insurance expenses, customs fees and taxes excluding VAT.

The VAT liability is determined as the difference between output VAT payable and input VAT recoverable. If a taxpayer also makes exempt supplies, the VAT offset can be allowed in the proportion of the taxable turnover to the total turnover. The input VAT amount which is not creditable is allowable for profit tax purposes.

VAT payers are required to issue a VAT invoice to the recipient of goods, work or services at the time of delivery of goods or services. A VAT invoice should contain date and number, names, legal address and bank accounts of the supplier and buyer, their tax identification numbers, description of the goods or services supplied, taxable turnover, VAT rate and amount and any sales tax.

VAT payers must submit monthly VAT returns and pay any VAT due within 25 days of the end of the reporting month. A register of VAT invoices issued and received during the tax period should be submitted along with the VAT returns.

### 5.1.3 Sales tax

Sales tax is an indirect tax. The tax base is the proceeds from sales of goods, work or services, excluding VAT.

Rates of sales tax are established as:

- At a rate of 1% for trading activities subject to VAT
- At a rate of 2% for other activities subject to VAT
- At a rate of 2% for trading activities not subject to VAT
- At a rate of 3% for other activities not subject to VAT.

The taxpayer is required to report and remit the sales tax on a monthly basis, within 20 days of the end of the reporting month.

### 5.1.4 Other taxes

#### *Non-resident's taxation*

Income of a foreign legal entity without a permanent establishment from the source in the Kyrgyz Republic is subject to withholding tax.

A permanent establishment is defined as a place of business through which a non-resident partially or completely performs its economic activities. The permanent establishment includes branches, places of management, offices, factories, workshops, mines, oil or gas wells, open-cast mines or any other place of extraction of natural resources.

The following tax rates are applied to non-resident incomes:

- 10% on dividends, interest and royalties
- 5% on income from insurance premiums (except obligatory insurance premiums) and international telecommunications and transportation services
- 10% on income from work and/or services, provided on the territory of the Kyrgyz Republic.

The Kyrgyz Republic has agreed double tax treaties with approximately 20 countries, which generally follow the OECD Model Tax Convention on Income and on Capital.

### ***Tax on use of natural resources***

Taxes on use of natural resources include:

- Bonus – one-time payment for the right to prospect and explore mineral deposits
- Royalty – regular payment for production from a mineral deposit.

The tax base for calculation of bonus is based on the volume of mineral reserves, including reserves added in the process of exploration and development of a mineral deposit.

The bonus amount is set by the Government of the Kyrgyz Republic on all types of minerals depending on the stage of commercial development and size of deposit.

Payers of bonus are required to file an appropriate return and pay the bonus within 30 days of receiving the license for the exploration and development of the mineral deposit.

Royalty is applied on:

- Revenues, excluding VAT and sales tax, received from sale of minerals or products derived from the processing of minerals
- Volume of products sold in natural form
- Amount of water extracted from the subsoil, except for specialist organisations supplying water.

Royalty rates depend on the type of mineral and the sales volume.

The Tax Code offers some stability in respect of the tax due for subsoil users. Subsoil users are protected for 20 years from increases in applicable tax rates at the date of conclusion of the license agreement.

### ***Excise tax***

Excise tax is imposed on all individuals and legal entities manufacturing excisable goods in the territory of the Kyrgyz Republic and on the import of excisable goods.

Excisable goods basically include ethyl spirit and alcohol products, cigarettes and tobacco goods and petroleum products.

Rates of excise tax are set annually by the Government in terms rate per volume unit or *ad valorem* (percentage of goods cost).

The tax period for excise tax is the calendar month. The taxpayer is must file a tax return and pay any excise tax due within 20 days of the end of the reporting month.

Certain alcohol and tobacco goods require an advance payment, via the purchase of an excise stamp which must be attached to each item prior to sale.

### ***Land tax***

Land tax applies to legal entities and individuals owning land or holding the rights to the temporary use of land.

The tax base is the area of land.

Basic rates of land tax are established by the Tax Code and depend on the location, areas and use of the land. Specific rates are fixed by local authorities.

The tax period for land tax is the calendar year. Taxpayers must submit an annual land tax return by 1 February of the following year.

Taxpayers owning agricultural land must pay the tax in three installments. Taxpayers owning other types of land should pay on a quarterly basis.

### ***Property tax***

Payers of property tax are legal entities and individuals who own or use taxable immovable and movable property.

The property tax base for immovable property is the area of the property and depends on the following factors:

- Location
- Use
- Operational life and the building materials used.

The taxable base for movable property is the engine capacity or operational life as appropriate.

The tax period for property tax is the calendar year. The due date for the annual tax return depends on the status of the taxpayer. Legal entities and individual entrepreneurs must submit their return by 1 March of the following year and individuals must submit by 1 May.

The tax for immovable property must be paid on a quarterly basis for legal entities and individual entrepreneurs and by 1 September by individuals. Tax for movable property must be paid by 1 August.

### ***Customs duties***

Customs duties are imposed on most goods imported into the Kyrgyz Republic and certain goods exported from the Kyrgyz Republic. Customs duties are normally levied on the customs value of taxable goods.

The customs value is defined as the invoice value plus the costs of transportation and insurance, commissions, broker fees and license and other fees in respect of intellectual property rights.

### ***Transfer pricing***

The tax treatment of transactions between related persons and all cross-border transactions are subject to transfer pricing regulation. If the transaction price differs from the market price, the tax authorities have the right to assess additional tax liabilities, late payment interest and penalties, based on a price equal to the market price.

There are following methods to determine transfer prices that are familiar to OECD methodologies:

- The comparable uncontrolled price method
- The resale price method
- The cost plus method.

## **5.2 Personal Income Tax**

According to the Tax Code the following individuals are liable to personal income tax:

- A citizen of the Kyrgyz Republic receiving income
- A resident of the Kyrgyz Republic receiving income
- A non-resident of the Kyrgyz Republic receiving income from a source in the Kyrgyz Republic
- A tax agent, paying income from a source in the Kyrgyz Republic to an individual.

An individual entrepreneur will not be a taxpayer of personal income tax, except when this individual entrepreneur acts as a tax agent.

An individual is not considered as resident if they spend less than 183 days in the Kyrgyz Republic over a period of 12 consecutive months.

### ***Taxation base***

The taxation base for personal income tax is income, calculated as the difference between the gross annual revenue received by the taxpayer for the tax period and allowable deductions.

Standard deductions are in some cases based on an amount referred to as the estimated rate. The estimated rate is KGS100 and the common deductions are:

- Personal deduction – 6.5 times the estimated rate for each month of the fiscal period
- Deduction for dependents of taxpayers – equal to the estimated rate for each dependent for each month of the fiscal period
- Deduction of contributions to the state social fund
- Deduction of contributions to a non-state pension fund subject to a ceiling of 8% of the taxpayer's taxation base.

Certain types of income and benefits received by an individual are exempted from personal income taxation. These include state allowances and compensation, interest received from local banks and dividends received from domestic entities.

The personal income tax rate is 10%.

An individual is responsible for calculating their personal income tax liability, for filing an annual income tax declaration and for paying their tax liability no later than 1 April of the year following the end of the tax year.

A tax agent paying income to an individual is responsible for the calculation, withholding and payment of the personal income tax liability.

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